

Message Text

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PAGE 01 STATE 026553

21

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CIEP-01 COME-00 DODE-00 EB-07 FPC-01 H-01 INR-07

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TO AMEMBASSY TEHRAN

INFO AMEMBASSY ABU DHABI

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E.O. 11652: N/A

SUBJECT: ATTACHMENT OF OIL CARGO FROM SHARJAH CONCESSION
BY OCCIDENTAL

1. NORTHCUTT ELY, LEGAL ADVISER TO SHARJAH AND TO BUTTES
GAS AND OIL CO., CALLED AT NEA/IRN FEB. 4 TO INFORM US THAT
OCCIDENTAL HAS ATTACHED 20 CARGOES OF OIL PRODUCED IN 12
MILE ZONE OF ABU MUSA. OCCIDENTAL HAS FILED COMPLAINTS IN
BOTH FEDERAL COURT (ADMIRALTY) AND IN STATE COURT FOR EACH
CARGO. FOLLOWING PARAGRAPHS ARE, ACCORDING TO ELY, EX-
TRACTS FROM THE COMPLAINT FILED JAN. 21, 1975 IN THE U.S.
DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA,
INVOLVING THE CARGO ON THE YANXILAS. ELY HAS SAID THAT
THESE ALLEGATIONS ARE TYPICAL OF THOSE IN THE OTHER ACTIONS:

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PAGE 02 STATE 026553

QUOTE FIFTEENTH. DURING THE PERIOD BETWEEN MAY 17 AND 23,

1970, REPRESENTATIVES OF BUTTES AND SHARJAH VISITED WITH REPRESENTATIVES OF THE NATIONAL IRANIAN OIL COMPANY. THIS VISIT WAS FOLLOWED BY A LETTER DATED MAY 28, 1970, FROM THE NATIONAL IRANIAN OIL COMPANY TO THE CHAIRMAN OF PLAINTIFF'S PARENT STATING, IN EFFECT, IRAN CLAIMED SOVEREIGNTY OVER THE AREAS TWELVE MILES TO SEAWARD OF ABU MUSA. PLAINTIFF ALLEGES THAT THE CLAIM OF IRAN TO ABU MUSA WAS WITHOUT FOUNDATION AND CONTRARY TO HISTORICAL FACT AND THAT ABU MUSA WAS, AND HAS ALWAYS BEEN, A PART OF SHARJAH. PLAINTIFF

FURTHER ALLEGES THAT THE ACTION OF THE GOVERNMENT OF IRAN WAS INDUCED BY BUTTES AND SHARJAH PURELY FOR THE PURPOSE OF INTERFERING WITH PLAINTIFF'S VESTED RIGHTS UNDER ITS CONCESSION WITH UMM, TO THE END THAT BUTTES COULD PRODUCE AND SHIP OIL FROM THE PROPOSED DRILLING LOCATION IN PLAINTIFF'S CONCESSION AREA.

NINETEENTH. IN NOVEMBER, 1971, A MEMORANDUM OF UNDERSTANDING WAS CONFECTED BETWEEN SHARJAH AND IRAN RELATING TO ABU MUSA, PROVIDING THAT NEITHER IRAN NOR SHARJAH RECOGNIZE THE OTHER'S CLAIM OF SOVEREIGNTY OVER ABU MUSA, THAT IRANIAN TROOPS WILL ARRIVE ON THAT ISLAND AND OCCUPY A PART THEREOF, THAT ABU MUSA'S TERRITORIAL SEA WAS TWELVE NAUTICAL MILES; THAT EXPLOITATION OF THE PETROLEUM RESOURCES AND OF SEABED AND SUBSOIL BENEATH THE TERRITORIAL SEA WOULD BE CONDUCTED BY BUTTES; AND THAT HALF OF THE GOVERNMENTAL OIL REVENUES WOULD BE PAID DIRECTLY TO IRAN AND THE OTHER HALF WOULD BE PAID TO SHARJAH. THE MEMORANDUM OF UNDERSTANDING WAS CONFECTED IN DISREGARD OF PLAINTIFF'S VESTED RIGHTS TO OPERATE WITHIN THE CONCESSION AREA, AND WAS IN FURTHERANCE OF BUTTES' AND ITS CO-VENTURER'S TORTIOUS INTERFERENCE WITH PLAINTIFF'S RIGHTS TO DRILL IN THE LOCATION REFERRED TO IN ARTICLE FIFTH HEREOF, AND TO PRODUCE AND SHIP THE PETROLEUM TO VARIOUS COMMERCIAL MARKETS THROUGHOUT THE WORLD. SHORTLY THEREAFTER, PURSUANT TO AN UNDERSTANDING BETWEEN BUTTES, SHARJAH AND IRAN, BUTTES STARTED ITS OIL DRILLING OPERATIONS IN THE VERY SAME LOCATION, WITHIN PLAINTIFF'S LIMITED OFFICIAL USE

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PAGE 03 STATE 026553

CONCESSION AREA, IN WHICH AN EXTENSIVE OIL AND GAS STRUCTURE HAD BEEN DISCOVERED BY PLAINTIFF'S GEOLOGICAL AND GEOPHYSICAL TESTS.

TWENTY-FIRST. AS A RESULT OF THE FOREGOING ACTIONS OF SHARJAH AND IRAN, AFFECTING THAT PORTION OF PLAINTIFF'S CONCESSION AREA WHICH, UNDER THE 1964 AGREEMENT BETWEEN THE RULERS OF SHARJAH AND UMM WAS PART OF THE CONTINENTAL

SHELF OF UMM, THE SOVEREIGNTY OF UMM OVER THAT ESSENTIAL PART OF THE PLAINTIFF'S CONCESSION AREA WAS SUSPENDED IN FACT, ALL OF WHICH OCCURRED AFTER THE TERMINATION OF THE SPECIAL TREATY RELATIONS OF SHARJAH WITH THE BRITISH GOVERNMENT ON DECEMBER 1, 1971. BY REASON OF THE FOREGOING, THE RULER OF UMM WAS DISABLED FROM PERFORMING HIS OBLIGATIONS UNDER HIS CONCESSION AGREEMENT WITH THE PLAINTIFF WHILE THE PLAINTIFF HADPERFORMED ALL ITS OBLIGATIONS THEREUNDER TO THE FULL EXTENT SO LONG AS THE RULER OF UMM PERFORMED HIS CORRESPONDING OBLIGATIONS TO MAINTAIN PLAINTIFF IN POSSESSION OF THE CONOBSSION AREA SO THAT DRILLING COULD PROCEED AS PROVIDED BY THE CONCESSION.

TWENTY-SECOND. PLAINTIFF ALLEGES THAT THE DE FACTO ANNEXATION OF THAT PORTION OF PLAINTIFF'S CONCESSION AREA IN DISREGARD AND VIOLATION OF PLAINTIFF'S VESTED PROPERTY RIGHTS IN THE CONCESSION AREA AND IN OIL EXTRACTED OR TO BE EXTRACTED THEREFROM CONSTITUTES A CONFISCATION OF PLAINTIFF'S PROPERTY RIGHTS IN VIOLATION OF INTERNATIONAL LAW, AND GIVES NO VALID TITLE TO SUCH SOVEREIGN OR ANYONE CLAIMING TITLE THROUGH THEM. END QUOTE

2. BUTTES SUBMITTED A MOTION ON FEB. 3 TO DISMISS THE COMPLAINTS BUT THE JUDGE CONVERTED THIS MOTION TO A MOTION FOR "SUMMARY JUDGMENT". JUDGE'S DECISION PERMITS WIDENING OF EVIDENCE WHICH CAN BE PRESENTED AND HE STATED THAT HE WISHED AN AFFIDAVIT CONCERNING IRAN'S HISTORICAL CLAIMS WHICH PREDATE 1970. ELY ALSO INFORMED US THAT MAIN DEFENSE OF BUTTES WILL BE BASED ON "ACT OF STATE" DOCTRINE WHICH WAS SUSTAINED IN PREVIOUS LITIGATION BEFORE FEDERAL COURT. HOWEVER, ELY CAUTIONED, THIS ACTION MAY REQUIRE PRESENTING TO THE JUDGE CERTIFIED COPIES OF THE 1971 LIMITED OFFICIAL USE

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PAGE 04 STATE 026553

MEMORANDUM OF UNDERSTANDING AND THE EXCHANGE OF NOTES AMONG IRAN, SHARJAH, AND THE U.K. APPARENTLY THESE DOCUMENTS HAVE APPEARED PREVIOUSLY IN PUBLIC (ELY BELIEVES THAT THEY WERE PUBLISHED IN THE MIDDLE EAST ECONOMIC SURVEY) BUT, AS YOU KNOW, GOI WAS AT ONE TIME VERY SENSITIVE TO PUBLICATION OF THOSE DOCUMENTS.

3. AMBASSADOR ZAHEDI HAS BEEN BRIEFED BY ELY ON THE COMPLAINT AND ELY IS PLANNING A FURTHER, MORE DETAILED BRIEFING OF MEMBERS OF IRANIAN EMBASSY HERE.

4. ELY NOTED THAT ALLEGATIONS IN COMPLAINT THAT MEMORANDUM OF UNDERSTANDING WAS "CONFECTED" BY GOI AND OTHERS, IN EFFECT, IS ANOTHER WAY OF CHARGING THE GOI WITH ENGAGING IN A CONSPIRACY WITH THE OTHERS. SOMEWHAT SIMILAR

PROBLEMS HAVE ARISEN IN THE U.K. AND IN BRITISH COURTS
THE CHARGE IS OF A CONSPIRACY AMONG IRAN, SHARJAH AND
BUTTES.

5. WORD "UMM" ABOVE OBVIOUSLY REFERS TO UMM AL QAIWAIN.

6. NAAS WILL CARRY FULL TEXT OF COMPLAINT.

7. YOU MAY WISH, AS APPROPRIATE, INFORM GOI OFFICIALS
OF THIS COURT ACTION.

- DHABI: ELY WILL BE INFORMING SHARJAH
AUTHORITIES OF DETAILS OF CASE. KISSINGER

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